

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 488 of 2008

Monday, this the 3rd day of August, 2009

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

T. Mahesh Kumar, aged 51 years,
 S/o. K. Thanupillai, Post Man, General
 Post Office, Trivandrum – 695 001,
 Permanent Address: "Gowri" No. 8/1361,
 Pallcihal, Nemon. P.O., Trivandrum-20.

Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by,
 The Secretary to the Government of India,
 Ministry of Communications, Department of
 Posts, New Delhi.
2. The Chief Post Master General,
 Kerala Circle, Trivandrum.
3. The Senior Superintendent of Post Offices,
 Trivandrum North Postal Division,
 Trivandrum-695001.

Respondents

(By Advocate – Mr. P.S. Biju, ACGSC)

The application having been heard on 03.08.2009, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

The question involved in this case is as to whether the date of appointment of the applicant relates back to "pre - 1.1.2004" or "post - 1.1.2004". This is crucial since from 1.1.2004 entitlement to pension as per

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1972 Pension Rules is not available.

2. Brief facts:

2.1 The applicant was initially appointed as ED Packer in June, 1992 and after a short spell from 1992 to 1995 when he was asked to officiate against the Group-D vacancy, he was again posted back as ED Packer. It was from January, 1996 that the applicant was again put to officiate as Group-D and he was continuously functioning in that capacity and drawing the salary attached to the Group-D post however, without any annual increments. An examination was held in November, 2002 as per recruitment rules for appointment as Group-D employees from the cadre of Gramin Dak Sevak. Applicant was accordingly selected vide communication dated 29.12.2003, Annexure A-1 refers. The applicant was sent on training with effect from 31.12.2003 vide Annexure A-2 and was issued with a posting order dated 7.1.2004 vide Annexure A-3 and the applicant started discharging his regular duties as a Postman with effect from 10.1.2004. During the period of training, the applicant was paid an amount equivalent to the emoluments which he was drawing earlier.

2.2 The applicant preferred representation in regard to his entitlement to pension as per the Pension rules of 1972 vide Annexure A-7. There was however, no response for the same. Hence, the applicant has filed this OA seeking the following relief:

 "(i) Declare that the respondents are bound to reckon the applicant's date of appointment as Postman as 31.12.2003;

- (ii) Direct the respondents to reckon the applicants date of appointment as Postman as 31.12.2003 and direct further to grant all consequential benefits including the benefit of annual increments with effect from first of December every year in the cadre of Postman;
- (iii) Direct the respondents to grant the consequential benefits of the directions in par 8 (b) above;
- (iv) Direct the respondents to reckon the applicant's service from January 1996 as qualifying for pension under CCS (Pension)Rules 1972 and direct further to record the same in the applicant's service register accordingly.”

3. Respondents have contested the OA. According to them the rules are clear that employees who were required to undergo departmental training relating to the jobs prior to 1.1.2004 before they were put on regular employment and were in receipt of stipend during such training would also be covered under the CCS (Pension) Rules, 1972 provided the period spent on such training was eligible for being counted as qualifying service under the CCS (Pension) Rules, 1972 (R-3). According to the respondents the amount paid to the applicant during the period of training cannot be said to be covered under stipend.

4. Applicant has filed his rejoinder adding a few Department of Post letters relating to calculation of wages in respect of unapproved candidates appointed in short term vacancies in the grade of Postman etc.

5. Respondents have filed an additional reply reiterating that the applicant is covered by only Annexure R-2 and R-3 letters. Annexure R-2 letter relates to payment of salary during the period of training while R-3 refers to payment of stipend. Further they also added Annexure R-4 to

contend that the applicant cannot be said to be officiating as per rules in a Group-D post.

6. Counsel for the applicant argued that admittedly the applicant was in receipt of certain amounts at the time of training. Even if the same cannot be categorized as pay it does satisfy the character of payment as a stipend. As such his case is fully covered under R-3.

7. Counsel for the respondents did admit that the applicant was paid the amount which is equal to the allowances he was earlier drawing but it has not been indicated as to whether the same amounted to pay or stipend.

8. Arguments were heard and documents perused. Admittedly the applicant was sent on training prior to 1.1.2004 and further the period of training as per Annexure A-5 and A-6 shall be reckoned as qualifying service for the purpose of pension. The emphasis in Annexure R-3 is more as to the fact that the period of training should be reckoned as qualifying service. As the applicant was paid some amount, the same shall be treated as stipend only and thus the applicant fulfills the entire conditions contained in Annexure R-3 to count his service rendered as a trainee to work out his entitlement for pension. As the period of training itself was anterior to 1.1.2004 the applicant's case follows in that category to which CCS (Pension) Rules 1972 is applicable.

9. The applicant has claimed his period of service from 1996 onwards on

the ground that he was officiating in a Group-D post. This has to be negated as counting of officiating service in a Group-D post can be considered only if specifically termed as qualifying service, as in the case of training.

10. In view of the above this OA is partly allowed to the extent that the applicant's qualifying service shall commence from the date of his training namely 30.12.2003 and as such he become eligible for pension under the CCS (Pension) Rules, subject to fulfillment of other attendant conditions.

No costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(K.B.S. RAJAN)
JUDICIAL MEMBER

"SA"